IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3915 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

POPATJI CHHAGUJI & 4 - Petitioner(s)
Versus
COMPETENT AUTHORITY & ADDL. COLLECTOR & 1 - Respondent(s)

==========

Appearance :
MR RC JANI for Petitioner(s) : 1 - 5.
MR AY KOGJE AGP for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/12/2006

ORAL JUDGMENT

1. By this petition under Article 226/227 of the Constitution of India, the petitioners seek to challenge the orders

made by the Competent Authority under sec.10(3) of the Urban Land (Ceiling and Regulation) Act on the ground that so long as the petitioners' application filed under sec.20 of the Act remained pending, the authority had no jurisdiction to proceed and pass any order under sec.10(3) of the Act or take any proceeding subsequent to sec.10(3) of the Act. Placing reliance upon certain judgments of this Court, it is contended that if the application filed under sec.20 of the Act is pending and has not been disposed of, the Competent Authority would only be entitled to proceed upto sec.10(2) of the Act and not beyond that, because, the grant of the permission under sec.20 or sec.21 of the Act may nullify all the proceedings under sec.10 of the Act.

2. For the reasons best known to the petitioners, copy of the application submitted by them to the Governments was not filed as an Annexure. When the court asked, the learned counsel for the petitioners (Shri S.M. Shah, who had appeared on the earlier occasion) informed the court that he was not possessed of the application. The court asked the Government to call for the original records. Shri Shah, on the next date of hearing produced copy of 3 page application and made a statement before the court

that it was the true copy of the application submitted by the petitioners. Shri Shah sought permission from the court stating that by mistake 2 pages, as page No.3, have been filed. He sought the permission from the court and removed one page and in his own handwriting, corrected page No.3 as page No.2 and page No.4 as page No.3. He made a statement at bar that it was 3 page application only.

3. Shri Kogje, learned A.G.P. made a statement before the court that the statement made by Shri Shah was a wrong statement, because two applications of even date were filed, one was of 4 pages while the other was of 5 pages.

4. On 17/11/2006, the court recorded everything and asked Shri Shah to examine the correctness of his statement. Subsequent thereto the petitioners have filed an affidavit dtd.27/11/2006 sworn by one Dineshbhai Thakkar son of Jayantkumar Vakhatram Thakkar. Along with the said affidavit, copies of two applications have been filed, each of the application is dtd.20/2/1991, the first application has been made by the petitioners and others, while the second application has been filed by Srinathji State Bank Co-operative Housing Society Limited, through its Chairman Bhudarbhai Narbheram Halani.

5. Shri R.C. Jani, learned counsel for the petitioners submit that the application filed by the Housing Society has already been rejected and the said rejection order has not been challenged by anybody. He, however, submits that so long as the application filed by the present petitioners was not disposed of, the authority could not proceed beyond sec.10(2) of the Act.

6. I have gone through the said application. The provisions contained in sec.20 of the Act are required to be understood. Sec.20 of the Act reads as under;-

Sec.20. Power to exempt.

(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter-

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being so is proposed to be used and such other relevant factors as the

circumstances of the case may require, it is necessary or expedient in the public interest so to do, the Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is

satisfied that any of the conditions subject to which any exemption under Cl.(a) or Cl.(b) of sub-section(1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly."

7. From clause (a) of sub-sec.(1) of sec.20 of the Act, it would clearly appear that if the Government is satisfied either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being used or is proposed to be used, and such other relevant factors, that it is expedient and necessary in the public interest so to do, the Government may, by an order, exempt such land subject to such conditions which may be specified in the order. In the present case, the application filed under sec.20 does not say that the holder of the land was seeking exemption on the ground of location of the land or on the ground that the land was

put to some particular use or the holder of the land wanted to put the land to some other use. If all the three requirements were not pleaded in the application, the application was incomplete and misconceived. When somebody makes an application seeking exemption under sec.20 of the Act, then application must meet the requirements of law. In the present case, the petitioners had moved the application on the ground that the land is within the urban area and is in the residential zone. They had submitted that they had agreed to sell the land in favour of housing society and have obtained the entire consideration for them and if permission to transfer is not granted, they would suffer undue hardship. A case of hardship does not fall within clause (a) of sub-sec.(1) of sec.20, but would fall in clause (b) of sub-sec.(1) of sec.20. Clause (b) of sub-sec.1 of sec.20 says that if the Government is satisfied that the application of the provisions of the Chapter would cause undue hardship to such person, the Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of the Chapter. A fair understanding of clause (b) would make it clear that undue hardship should be suffered by the

owner of the land and not by the proposed transferee. In the present case, the language in which the application has been couched, simply says that if the land is not permitted to be transferred in favour of the housing society, the members of the housing society would unnecessarily suffer undue hardship, because their dream of a house of their own, would stand nullify. The whole of the application nowhere says that what hardship would be suffered by the petitioners. If an application which does not meet the requirements of clause (a) or clause (b) of sub-sec.(1) of sec. 20 of the Act, then non-disposal of such application would not forestall the proceedings and would not denude the competent authority of its jurisdiction to proceed beyond a stage of sec.10(2) of the Act. Non-consideration of the application, in the present case would not make any difference and its pendency would not change the legal position.

8. It was then contended that the petitioners are in possession of the property and under the circumstances, this court should declare that the proceedings have abated.

9. Shri Kogje, learned AGP has made a categorical statement that the State Government has already

dispossessed the petitioners and has taken the possession of the land. There is no reason for me to disbelieve the statement coming from the side of the State. If the State Government has already taken the possession and assuming subsequent to dispossession of the petitioners, the petitioners have again entered into the possession, the said entry would not amount to legal possession and such possession would not be that of the owner for the purposes of the Act and its repeal but would be that of a trespassers or encroacher.

10. No other point was raised by the learned counsel for the petitioners.

11. I find no reason to interfere in the matter. The petition deserves to and is accordingly dismissed with cost of Rs.5000.00 (Rupees Five Thousand only). Interim relief, if any, is vacated.

(R.S. GARG, J.)

rafik